



MAYOR AND COUNCIL AGENDA

NO. 25 DEPT.: Legal/ Community Planning and Development Services DATE: Sept. 17, 2004

Contact: Deane Mellander, Planner III

ACTION: Discussion and Instruction on proposed zoning text amendment TXT2004-00214: to amend the Zoning Ordinance to delete the requirement for a finding of need in the consideration of a special exception for an automobile filling station, drive-in restaurant, or mechanical car wash; Mayor and Council, applicants.

ACTION STATUS:

FOR THE MEETING OF: 10/4/04

INTRODUCED

PUB. HEARING 9/13/04

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 353

☐ CONSENT AGENDA

RECOMMENDATION: Discuss the results of the public hearing and instruct staff on further actions.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Will delete the finding of neighborhood need in consideration for a special exception for an automobile filling station, as well as for a drive-in restaurant and a mechanical car wash.

BACKGROUND: The concept of making a finding of need for certain uses dates back several decades, and was likely developed in response to an era when facilities such as gas stations seemed to pop up on every commercial corner. The current language in the code dates at least from 1956. The entire auto service business has completely changed in those near-50 years. The gain in sophistication of market studies and changes in the gas station industry are such that simple market forces appear to adequately control the distribution of these uses. This same section of the code also requires a need finding for drive-in restaurants and mechanical car washes. The text amendment leaves in place the required finding that there won't be a saturation of these uses in the same neighborhood, which is probably the more important factor in reviewing these applications.

The Planning Commission reviewed this text amendment at its meeting on September 8, 2004 and recommended approval as drafted. The Planning Commission wanted to be sure that removal of this section would still allow the Board of Appeals to deny an application that would result in an overconcentration of a special exception use in the neighborhood. Staff responded that Section 25-353(b)(2) requires the Board to find "that the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use." The Planning Commission also asked if there could be a standard for an overconcentration of a use. Staff indicated that it varies by use and by location. For instance, four gas stations in close proximity

along Rockville Pike can be less of a concern than 2 or 3 gas stations at the entrance to a neighborhood.

Members of the Board of Appeals were asked to provide their comments for the record. Their comments will be provided prior to the meeting.

At the public hearing on September 13, 2004 there were two speakers. Dr. Lih Young asked that the City not concern itself with small matters while ignoring larger issues. William Meyer supported the text amendment. He questioned whether or not the code should be changed to require renewal of the special exception if there was a change in the "branding" of gas stations. The City's Assistant City Attorney noted that special exceptions run with the land, rather than with the owner. If a new owner fully complies with the original conditions of approval, no new special exception is required.

At the close of the hearing, the Mayor and Council indicated that the record of the hearing would close at 5:00 p.m. Monday, September 27. No additional testimony has been received.

PREPARED BY:

Deane E. Mellander

Deane Mellander, Planner III

9/23/04

Date

APPROVE:

Robert J. Spaulding

Robert J. Spaulding, AICP, Chief of Planning

9.23.4

Date

APPROVE:

Arthur D. Chambers

Arthur D. Chambers, AICP, CPDS Director

9/24/04

Date

APPROVE:

Catherine Tuck Parrish

Catherine Tuck Parrish, Acting City Manager

9/28/04

Date

LIST OF ATTACHMENTS:

1. Planning Commission recommendation.
2. Proposed text amendment.
3. Staff report to the Planning Commission.
4. Text amendment application.
5. Board of Appeals Recommendation.



City of Rockville

MEMORANDUM

September 17, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Text Amendment Application TXT2004-00214, to delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception; Mayor and Council, Applicant

At its meeting of September 8, 2004 the Planning Commission reviewed the above referenced text amendment that was filed by the Mayor and Council. The proposed text amendment would delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception.

The Planning Staff Report recommended approval of the text amendment as introduced.

The Planning Commission received comments from the staff. There were no other comments received.

The Planning Commission wanted to be sure that removal of this section would still allow the Board of Appeals to deny an application that would result in an overconcentration of a special exception use in the neighborhood. Staff responded that Section 25-353(b)(2) requires the Board to find "that the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use." The Planning Commission also asked if there could be a standard for an overconcentration of a use. Staff indicated that it varies by use and by location. For instance, four gas stations in close proximity along Rockville Pike can be less of a concern than 2 or 3 gas stations at the entrance to a neighborhood.

Following discussion with the staff and deliberation, the Planning Commission is in agreement with the intent of the text amendment and the planning staff. Therefore the Planning

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Commission, on motion of Commissioner Mullican, seconded by Commissioner Holtz, recommends approval of the proposed text amendment on a vote of 7 to 0.

cc: TXT2004-00213 file
Planning Commission

August 23, 2004

Proposed Text Amendment TXT2004-00214: To delete the requirement for a finding of need for automobile filling stations.

Amend Article VIII, Division 2, as follows:

Sec. 25-353. Automobile filling station, class I; automobile filling station, class II; restaurant with drive-through and mechanical carwash.

- (a) *Scope.* Except as otherwise provided in this section, the provisions of this section apply to automobile filling stations, class I; automobile filling stations, class II; restaurants with drive-through; and mechanical carwashes.
- (b) *Additional finding[s] required.* The additional finding[s] required [are] is as follows:
 - (1) [That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City; and]
 - [(2)] That the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use.

* * *

Note: [Brackets] indicate material deleted
Underlining indicates material added
[[Double brackets]] indicate material deleted after introduction
Double underlining indicates material added after introduction



City of Rockville

MEMORANDUM

August 24, 2004

TO: City of Rockville Planning Commission

FROM: Deane Meilander, Planner III *DM*

VIA: Bob Spalding, AICP, Chief of Planning

SUBJECT: Proposed Zoning Text Amendment TXT2004-00214; To delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception.

BACKGROUND

The Mayor and Council directed the staff to prepare a zoning text amendment for the purpose of deleting the requirement for the finding of need for an automobile filling station as part of the consideration of a special exception. The public hearing on this text amendment will be held on September 13, 2004.

ANALYSIS

Section 25-353 of the zoning ordinance establishes the special requirements for granting special exceptions for automobile filling stations. This section also applies to drive-through restaurants and mechanical car washes.

Subsection (b) of this section reads as follows:

- (b) *Additional findings required.* The additional findings required are as follows:
- (1) That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City; and
 - (2) That the use at the location proposed will not result in a multiplicity of saturation of similar uses in the same general neighborhood of the proposed use.

The proposed text amendment would delete subsection (1) of the text, with appropriate modifications to the remaining language for clarity. The concept of making a finding of need for certain uses dates back several decades, and was likely developed in response to an era when facilities such as gas stations seemed to pop up on every commercial corner. The current language in the code dates at least from 1956. The entire auto service business has completely changed in those near-50 years. The gain in sophistication of market studies and changes in the gas station industry are such that simple market forces appear to adequately control the distribution of these uses. The finding of "need" in this context has always been more subjective than empirical. It should be noted that other jurisdictions have also removed similar provisions in recent years. The proposed amendment will also delete the need finding for drive-in restaurants and mechanical car washes, which are covered under the same section of the Code. The text amendment leaves in place the required finding that there won't be a saturation of these uses in the same neighborhood, which is probably the more important factor in reviewing these applications. This provision should adequately cover drive-in restaurants and mechanical car washes as well as filling stations.

RECOMMENDATION

The staff finds that the proposed text amendment will delete language that is archaic and unnecessary. Staff therefore recommends approval of proposed text amendment TXT2004-00214 as submitted.

/dem

Attachments: A. Proposed Text Amendment
B. Text Amendment Application

APPLICATION TO THE CITY OF ROCKVILLE
FOR A TEXT AMENDMENT
TO THE ZONING AND PLANNING ORDINANCE

THIS APPLICATION MUST BE TYPEWRITTEN OR PRINTED AND NOTARIZED AND SUBMITTED IN DUPLICATE TO THE CITY CLERK FOR FILING. ALL ITEMS MUST BE COMPLETED AND THE FILING FEE MUST ACCOMPANY THIS APPLICATION.

DO NOT WRITE IN THIS SPACE

Mayor and Council of Rockville
Name of Applicant

Application No. TXT2004-00214

Filing Date 7/27/04

111 Marylandd Avenue
Address

Filing Fee N/A

Public Hearing Date 9/13/04

Rockville, MD 20850
Telephone Number

Decision/Date

240-314-8200

APPLICATION IS HEREBY MADE WITH THE ROCKVILLE MAYOR AND COUNCIL FOR APPROVAL OF A CHANGE IN THE TEXT OF THE ZONING AND PLANNING ORDINANCE OF ROCKVILLE, MARYLAND.

Page 2033 Article VIII Section 25-353

FROM: Which reads as follows:

See attached

TO: Read as follows:

See attached

By: _____
Signature of Applicant

Subscribed and sworn before me this _____ day of _____, 19____

My Commission Expires: _____
Notary Public

August 23, 2004

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* * *

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City of Rockville

MEMORANDUM

September 24, 2004

TO: Mayor and City Council

FROM: City of Rockville Board of Appeals

SUBJECT: Text Amendment Application TXT2004-00214

The Board of Appeals supports the referenced Zoning Text Amendment, which proposes to delete Section 25-353 (b)(1) from the City Rockville Zoning Ordinance, which reads as follows: "That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City."

The Board of Appeals fully supports the deletion of this provision, since this amendment was one of several, the Board has recommended to the Mayor and Council, as a formal amendment to the Zoning Ordinance.

The Board of Appeals unanimous support of this text amendment is affirmed by signature of its Chairman for the 2004 calendar year.

Respectfully,

A handwritten signature in black ink that reads "Roy Deitchman".

Roy Deitchman
Chair, Board of Appeals

/cdc

cc: Cas Chasten, Planner III
Margaret Hall, Planner II
Bob Spalding, Chief of Planning
Board of Appeals members